

2SHB 3274 - S AMD 998
By Senator Fairley

ADOPTED AND ENGROSSED 03/06/08

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 53.08.120 and 2000 c 138 s 210 are each amended to
4 read as follows:

5 (1) All material and work required by a port district not meeting
6 the definition of public work in RCW 39.04.010(4) may be procured in
7 the open market or by contract and all work ordered may be done by
8 contract or day labor.

9 (2)(a) All such contracts for work meeting the definition of
10 "public work" in RCW 39.04.010(4), the estimated cost of which exceeds
11 two hundred thousand dollars, shall be awarded using a competitive bid
12 process. The contract must be ((let)) awarded at public bidding upon
13 notice published in a newspaper of general circulation in the district
14 at least thirteen days before the last date upon which bids will be
15 received, calling for ((sealed)) bids upon the work, plans and
16 specifications for which shall then be on file in the office of the
17 commission for public inspection. The same notice may call for bids on
18 such work or material based upon plans and specifications submitted by
19 the bidder. The competitive bidding requirements for purchases or
20 public works may be waived pursuant to RCW 39.04.280 if an exemption
21 contained within that section applies to the purchase or public work.

22 ((However)) (b) For all contracts related to work meeting the
23 definition of "public work" in RCW 39.04.010(4) that are estimated at
24 two hundred thousand dollars or less, a port district may let contracts
25 using the small works roster process under RCW 39.04.155 in lieu of
26 ((calling)) advertising for ((sealed)) bids. Whenever possible, the
27 managing official shall invite at least one proposal from a minority
28 contractor who shall otherwise qualify under this section.

29 When awarding such a contract for work, when utilizing proposals
30 from the small works roster, the managing official shall give weight to

1 the contractor submitting the lowest and best proposal, and whenever it
2 would not violate the public interest, such contracts shall be
3 distributed equally among contractors, including minority contractors,
4 on the small works roster.

5 **Sec. 2.** RCW 39.30.020 and 1974 ex.s. c 74 s 1 are each amended to
6 read as follows:

7 In addition to any other remedies or penalties contained in any
8 law, municipal charter, ordinance, resolution or other enactment, any
9 municipal officer by or through whom or under whose supervision, in
10 whole or in part, any contract is made in (~~wilful~~) willful and
11 intentional violation of any law, municipal charter, ordinance,
12 resolution or other enactment requiring competitive bidding or
13 procurement procedures for consulting, architectural, engineering, or
14 other services, upon such contract shall be held liable to a civil
15 penalty of not less than three hundred dollars and may be held liable,
16 jointly and severally with any other such municipal officer, for all
17 consequential damages to the municipal corporation. If, as a result of
18 a criminal action, the violation is found to have been intentional, the
19 municipal officer shall immediately forfeit his or her office. For
20 purposes of this section, "municipal officer" (~~shall~~) means an
21 "officer" or "municipal officer" as those terms are defined in RCW
22 42.23.020(2).

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 53.08 RCW
24 to read as follows:

25 By January 1, 2010, each port with more than ten million dollars in
26 annual gross revenues, excluding grant and loan funds, shall maintain
27 a database on a public web site of all contracts, including public
28 works and personal services. At a minimum, the database shall identify
29 the contractor, the purpose of the contract, effective dates and
30 periods of performance, the cost of the contract and funding source,
31 any modifications to the contract, and whether the contract was
32 competitively procured or awarded on a sole source basis.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 53.08 RCW
34 to read as follows:

35 (1) If a port district purchases property for a facility outside

1 the port's jurisdiction, the port district or districts with
2 responsibility for the future property development and use must prepare
3 and implement a communication plan within sixty days after contracting
4 with a site planning consultant. The communication plan must be
5 reasonably calculated to provide property owners and other affected and
6 interested individuals information for review and comment. The plan
7 shall be made available through the planning and predesign phase. The
8 communication plan shall include information about:

9 (a) The type and scale of proposed uses on the site;

10 (b) The type and scale of business and industrial activities that
11 the development is likely to later attract to the site and to the
12 nearby area;

13 (c) The general character and scope of potential impacts on air
14 and water quality, noise, and local and state transportation
15 infrastructure, including state highways, local roads, rail, and
16 shipping.

17 (2) Information included in the communication plan under subsection
18 (1) of this section may be made available by means of web pages, office
19 inspection and copying of materials, one or more property tours, and
20 public meetings that allow interested citizens to comment to port
21 officials on several occasions over time as the development plans
22 evolve.

23 (3) Environmental mitigation, habitat restoration, and dredged
24 material disposal projects are exempt from the requirements of this
25 section.

26 NEW SECTION. **Sec. 5.** The legislature hereby establishes a policy
27 of open competition for all personal service contracts entered into by
28 port districts unless specifically exempted under this chapter. It is
29 further the intent to provide differentiation between the competitive
30 procurement procedures for personal and professional services
31 contracts.

32 NEW SECTION. **Sec. 6.** The definitions in this section apply
33 throughout this chapter unless the context clearly requires otherwise.

34 (1) "Commission" means the elected oversight body of an individual
35 port.

1 (2) "Competitive solicitation" means a documented formal process
2 providing an equal and open opportunity to qualified parties and
3 culminating in a selection based on criteria, in which criteria other
4 than price may be the primary basis for consideration. The criteria
5 may include such factors as the consultant's fees or costs, ability,
6 capacity, experience, reputation, responsiveness to time limitations,
7 responsiveness to solicitation requirements, quality of previous
8 performance, and compliance with statutes and rules relating to
9 contracts or services.

10 (3) "Consultant" means an independent individual or firm
11 contracting with a port to perform a service or render an opinion or
12 recommendation according to the consultant's methods and without being
13 subject to the control of the port except as to the result of the work.
14 The port monitors progress under the contract and authorizes payment.

15 (4) "Emergency" means a set of unforeseen circumstances beyond the
16 control of the port that either:

17 (a) Present a real, immediate threat to the proper performance of
18 essential functions; or

19 (b) May result in material loss or damage to property, bodily
20 injury, or loss of life if immediate action is not taken.

21 (5) "Evidence of competition" means documentation demonstrating
22 that the port has solicited responses from multiple firms in selecting
23 a consultant.

24 (6) "Personal service" means professional or technical expertise
25 provided by a consultant to accomplish a specific study, project, task,
26 or other work statement which may not reasonably be required in
27 connection with a public works project meeting the definition in RCW
28 39.04.010(4). "Personal service" does not include purchased services
29 as defined under subsection (8) of this section or professional
30 services procured using the competitive selection requirements in
31 chapter 39.80 RCW.

32 (7) "Personal service contract" means an agreement, or any
33 amendment thereto, with a consultant for the rendering of personal
34 services to the port.

35 (8) "Purchased services" means services provided by a vendor to
36 accomplish routine, continuing, and necessary functions. "Purchased
37 services" includes, but is not limited to, services for equipment
38 maintenance and repair; operation of a physical plant; security;

1 computer hardware and software maintenance; data entry; key punch
2 services; and computer time-sharing, contract programming, and
3 analysis.

4 (9) "Sole source" means a consultant providing professional or
5 technical expertise of such a unique nature that the consultant is
6 clearly and justifiably the only practicable source to provide the
7 service. The justification shall be based on the uniqueness of the
8 service, sole availability at the location required, or warranty or
9 defect correction service obligations of the consultant.

10 NEW SECTION. **Sec. 7.** All personal service contracts shall be
11 entered into pursuant to competitive solicitation, except for:

12 (1) Emergency contracts;

13 (2) Sole source contracts;

14 (3) Contract amendments;

15 (4) Contracts between a consultant and a port of less than fifty
16 thousand dollars. However, contracts of fifty thousand dollars or
17 greater but less than two hundred thousand dollars shall have
18 documented evidence of competition. Ports shall not structure
19 contracts to evade these requirements; and

20 (5) Other specific contracts or classes or groups of contracts
21 exempted from the competitive solicitation process by the commission
22 when it has been determined that a competitive solicitation process is
23 not appropriate or cost-effective.

24 NEW SECTION. **Sec. 8.** Emergency contracts shall be filed with the
25 commission and made available for public inspection within seven
26 working days following the commencement of work or execution of the
27 contract, whichever occurs first. Documented justification for
28 emergency contracts shall be provided to the commission when the
29 contract is filed.

30 NEW SECTION. **Sec. 9.** (1) Sole source contracts shall be filed
31 with the commission and made available for public inspection prior to
32 the proposed starting date of the contract. Documented justification
33 for sole source contracts shall be provided to the commission when the
34 contract is filed. For sole source contracts of fifty thousand dollars

1 or more, documented justification shall include evidence that the port
2 attempted to identify potential consultants.

3 (2) The commission shall ensure that the costs, fees, or rates
4 negotiated in filed sole source contracts of fifty thousand dollars or
5 more are reasonable.

6 NEW SECTION. **Sec. 10.** A port commissioner or employee shall not
7 expend any funds for personal service contracts subject to this chapter
8 unless the port has complied with the competitive procurement and other
9 requirements of this chapter. The port commissioner or employee
10 executing the personal service contracts is responsible for compliance
11 with the requirements of this chapter. Willful and intentional failure
12 to comply with the requirements of this chapter subjects the port
13 commissioner or employee to a civil penalty in the amount of three
14 hundred dollars. A consultant who knowingly violates this chapter in
15 seeking or performing work under a personal services contract is
16 subject to a civil penalty of three hundred dollars or twenty-five
17 percent of the amount of the contract, whichever is greater. The state
18 auditor is responsible for auditing violations of this chapter through
19 its regular financial and accountability audits. The attorney general
20 is responsible for prosecuting violations of this chapter.

21 NEW SECTION. **Sec. 11.** (1) Substantial changes in the scope of
22 work specified in the contract or which are substantial additions to
23 the scope of work specified in the formal solicitation document shall
24 be submitted to the commission for a determination as to whether the
25 change warrants the work to be awarded as a new contract.

26 (2) An amendment or amendments to personal service contracts, if
27 the value of the amendment or amendments, whether singly or
28 cumulatively, exceeds fifty percent of the value of the original
29 contract must be filed with the commission and made available for
30 public inspection prior to the proposed starting date of services under
31 the amendments.

32 NEW SECTION. **Sec. 12.** This chapter does not apply to:
33 (1) Contracts specifying a fee of less than fifty thousand dollars;
34 (2) Contracts awarded to companies that furnish a service where the

1 tariff is established by the utilities and transportation commission or
2 other public entity;

3 (3) Intergovernmental agreements awarded to any governmental
4 entity, whether federal, state, or local and any department, division,
5 or subdivision thereof;

6 (4) Contracts awarded for services to be performed for a standard
7 fee, when the standard fee is established by the contracting agency or
8 any other governmental entity and a like contract is available to all
9 qualified applicants;

10 (5) Contracts for services that are necessary to the conduct of
11 collaborative research if prior approval is granted by the funding
12 source;

13 (6) Contracts for professional services which are entered into
14 under chapter 39.80 RCW; and

15 (7) Contracts for the employment of expert witnesses for the
16 purposes of litigation or legal services to supplement the expertise of
17 port staff.

18 NEW SECTION. **Sec. 13.** (1) The municipal research services center,
19 in cooperation with the Washington public ports association, shall
20 develop guidelines for the effective and efficient management of
21 personal service contracts by all ports. The guidelines must, at a
22 minimum, include:

23 (a) Accounting methods, systems, measures, and principles to be
24 used by ports and consultants;

25 (b) Precontract procedures for selecting potential consultants
26 based on their qualifications and ability to perform;

27 (c) Incorporation of performance measures and measurable benchmarks
28 in contracts, and the use of performance audits;

29 (d) Uniform contract terms to ensure contract performance and
30 compliance with port, state, and federal standards;

31 (e) Proper payment and reimbursement methods to ensure that the
32 port receives full value for taxpayer moneys, including cost
33 settlements and cost allowance;

34 (f) Postcontract procedures, including methods for recovering
35 improperly spent or overspent moneys for disallowance and adjustment;

36 (g) Adequate contract remedies and sanctions to ensure compliance;

1 (h) Monitoring, fund tracking, risk assessment, and auditing
2 procedures and requirements;

3 (i) Financial reporting, record retention, and record access
4 procedures and requirements;

5 (j) Procedures and criteria for terminating contracts for cause or
6 otherwise; and

7 (k) Any other subject related to effective and efficient contract
8 management.

9 (2) The municipal research services center shall submit a status
10 report on the guidelines required by subsection (1) of this section to
11 the governor and the appropriate standing committees of the legislature
12 no later than December 1, 2008.

13 (3) The Washington public ports association shall publish a
14 guidebook for use by ports containing the guidelines developed under
15 subsection (1) of this section.

16 (4) The municipal research services center and the Washington
17 public ports association shall each make the guidelines available on
18 their web sites.

19 NEW SECTION. **Sec. 14.** (1) A port entering into or amending
20 personal service contracts shall follow the policies adopted by the
21 commission, which shall be based on guidelines developed pursuant to
22 section 13 of this act.

23 (2) This section applies to ports entering into or renewing
24 contracts after January 1, 2010.

25 NEW SECTION. **Sec. 15.** The Washington public ports association
26 shall provide a training course for port personnel responsible for
27 executing and managing personal service contracts. The course must
28 contain training on effective and efficient contract management under
29 the guidelines established under section 13 of this act. Port
30 districts shall require port employees responsible for executing or
31 managing personal service contracts to complete the training course to
32 the satisfaction of the commission.

33 **Sec. 16.** RCW 39.04.010 and 2007 c 133 s 1 are each amended to read
34 as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Award" means the formal decision by the state or municipality
4 notifying a responsible bidder with the lowest responsive bid of the
5 (~~state~~) state's or municipality's acceptance of the bid and intent to
6 enter into a contract with the bidder.

7 (2) "Contract" means a contract in writing for the execution of
8 public work for a fixed or determinable amount duly awarded after
9 advertisement and competitive bid, or a contract awarded under the
10 small works roster process in RCW 39.04.155.

11 (3) "Municipality" means every city, county, town, port district,
12 district, or other public agency authorized by law to require the
13 execution of public work, except drainage districts, diking districts,
14 diking and drainage improvement districts, drainage improvement
15 districts, diking improvement districts, consolidated diking and
16 drainage improvement districts, consolidated drainage improvement
17 districts, consolidated diking improvement districts, irrigation
18 districts, or other districts authorized by law for the reclamation or
19 development of waste or undeveloped lands.

20 (4) "Public work" means all work, construction, alteration, repair,
21 or improvement other than ordinary maintenance, executed at the cost of
22 the state or of any municipality, or which is by law a lien or charge
23 on any property therein. All public works, including maintenance when
24 performed by contract shall comply with chapter 39.12 RCW. "Public
25 work" does not include work, construction, alteration, repair, or
26 improvement performed under contracts entered into under RCW
27 36.102.060(4) or under development agreements entered into under RCW
28 36.102.060(7) or leases entered into under RCW 36.102.060(8).

29 (5) "Responsible bidder" means a contractor who meets the criteria
30 in RCW 39.04.350.

31 (6) "State" means the state of Washington and all departments,
32 supervisors, commissioners, and agencies of the state.

33 **Sec. 17.** RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and
34 2007 c 133 s 4 are each reenacted and amended to read as follows:

35 (1) This section provides uniform small works roster provisions to
36 award contracts for construction, building, renovation, remodeling,
37 alteration, repair, or improvement of real property that may be used by

1 state agencies and by any local government that is expressly authorized
2 to use these provisions. These provisions may be used in lieu of other
3 procedures to award contracts for such work with an estimated cost of
4 two hundred thousand dollars or less. The small works roster process
5 includes the limited public works process authorized under subsection
6 (3) of this section and any local government authorized to award
7 contracts using the small works roster process under this section may
8 award contracts using the limited public works process under subsection
9 (3) of this section.

10 (2)(a) A state agency or authorized local government may create a
11 single general small works roster, or may create a small works roster
12 for different specialties or categories of anticipated work. Where
13 applicable, small works rosters may make distinctions between
14 contractors based upon different geographic areas served by the
15 contractor. The small works roster or rosters shall consist of all
16 responsible contractors who have requested to be on the list, and where
17 required by law are properly licensed or registered to perform such
18 work in this state. A state agency or local government establishing a
19 small works roster or rosters may require eligible contractors desiring
20 to be placed on a roster or rosters to keep current records of any
21 applicable licenses, certifications, registrations, bonding, insurance,
22 or other appropriate matters on file with the state agency or local
23 government as a condition of being placed on a roster or rosters. At
24 least once a year, the state agency or local government shall publish
25 in a newspaper of general circulation within the jurisdiction a notice
26 of the existence of the roster or rosters and solicit the names of
27 contractors for such roster or rosters. In addition, responsible
28 contractors shall be added to an appropriate roster or rosters at any
29 time they submit a written request and necessary records. Master
30 contracts may be required to be signed that become effective when a
31 specific award is made using a small works roster.

32 (b) A state agency establishing a small works roster or rosters
33 shall adopt rules implementing this subsection. A local government
34 establishing a small works roster or rosters shall adopt an ordinance
35 or resolution implementing this subsection. Procedures included in
36 rules adopted by the department of general administration in
37 implementing this subsection must be included in any rules providing
38 for a small works roster or rosters that is adopted by another state

1 agency, if the authority for that state agency to engage in these
2 activities has been delegated to it by the department of general
3 administration under chapter 43.19 RCW. An interlocal contract or
4 agreement between two or more state agencies or local governments
5 establishing a small works roster or rosters to be used by the parties
6 to the agreement or contract must clearly identify the lead entity that
7 is responsible for implementing the provisions of this subsection.

8 (c) Procedures shall be established for securing telephone,
9 written, or electronic quotations from contractors on the appropriate
10 small works roster to assure that a competitive price is established
11 and to award contracts to the lowest responsible bidder, as defined in
12 RCW 39.04.010. Invitations for quotations shall include an estimate of
13 the scope and nature of the work to be performed as well as materials
14 and equipment to be furnished. However, detailed plans and
15 specifications need not be included in the invitation. This subsection
16 does not eliminate other requirements for architectural or engineering
17 approvals as to quality and compliance with building codes. Quotations
18 may be invited from all appropriate contractors on the appropriate
19 small works roster. As an alternative, quotations may be invited from
20 at least five contractors on the appropriate small works roster who
21 have indicated the capability of performing the kind of work being
22 contracted, in a manner that will equitably distribute the opportunity
23 among the contractors on the appropriate roster. However, if the
24 estimated cost of the work is from one hundred thousand dollars to two
25 hundred thousand dollars, a state agency or local government(~~(, other~~
26 ~~than a port district,)~~) that chooses to solicit bids from less than all
27 the appropriate contractors on the appropriate small works roster must
28 also notify the remaining contractors on the appropriate small works
29 roster that quotations on the work are being sought. The government
30 has the sole option of determining whether this notice to the remaining
31 contractors is made by: (i) Publishing notice in a legal newspaper in
32 general circulation in the area where the work is to be done; (ii)
33 mailing a notice to these contractors; or (iii) sending a notice to
34 these contractors by facsimile or other electronic means. For purposes
35 of this subsection (2)(c), "equitably distribute" means that a state
36 agency or local government soliciting bids may not favor certain
37 contractors on the appropriate small works roster over other

1 contractors on the appropriate small works roster who perform similar
2 services.

3 (d) A contract awarded from a small works roster under this section
4 need not be advertised.

5 (e) Immediately after an award is made, the bid quotations obtained
6 shall be recorded, open to public inspection, and available by
7 telephone inquiry.

8 (3) In lieu of awarding contracts under subsection (2) of this
9 section, a state agency or authorized local government may award a
10 contract for work, construction, alteration, repair, or improvement
11 projects estimated to cost less than thirty-five thousand dollars using
12 the limited public works process provided under this subsection.
13 Public works projects awarded under this subsection are exempt from the
14 other requirements of the small works roster process provided under
15 subsection (2) of this section and are exempt from the requirement that
16 contracts be awarded after advertisement as provided under RCW
17 39.04.010.

18 For limited public works projects, a state agency or authorized
19 local government shall solicit electronic or written quotations from a
20 minimum of three contractors from the appropriate small works roster
21 and shall award the contract to the lowest responsible bidder as
22 defined under RCW 39.04.010. After an award is made, the quotations
23 shall be open to public inspection and available by electronic request.
24 A state agency or authorized local government shall attempt to
25 distribute opportunities for limited public works projects equitably
26 among contractors willing to perform in the geographic area of the
27 work. A state agency or authorized local government shall maintain a
28 list of the contractors contacted and the contracts awarded during the
29 previous twenty-four months under the limited public works process,
30 including the name of the contractor, the contractor's registration
31 number, the amount of the contract, a brief description of the type of
32 work performed, and the date the contract was awarded. For limited
33 public works projects, a state agency or authorized local government
34 may waive the payment and performance bond requirements of chapter
35 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby
36 assuming the liability for the contractor's nonpayment of laborers,
37 mechanics, subcontractors, materialpersons, suppliers, and taxes
38 imposed under Title 82 RCW that may be due from the contractor for the

1 limited public works project, however the state agency or authorized
2 local government shall have the right of recovery against the
3 contractor for any payments made on the contractor's behalf.

4 (4) The breaking of any project into units or accomplishing any
5 projects by phases is prohibited if it is done for the purpose of
6 avoiding the maximum dollar amount of a contract that may be let using
7 the small works roster process or limited public works process.

8 (5)(a) A state agency or authorized local government may use the
9 limited public works process of subsection (3) of this section to
10 solicit and award small works roster contracts to small businesses that
11 are registered contractors with gross revenues under one million
12 dollars annually as reported on their federal tax return.

13 (b) A state agency or authorized local government may adopt
14 additional procedures to encourage small businesses that are registered
15 contractors with gross revenues under two hundred fifty thousand
16 dollars annually as reported on their federal tax returns to submit
17 quotations or bids on small works roster contracts.

18 (6) As used in this section, "state agency" means the department of
19 general administration, the state parks and recreation commission, the
20 department of natural resources, the department of fish and wildlife,
21 the department of transportation, any institution of higher education
22 as defined under RCW 28B.10.016, and any other state agency delegated
23 authority by the department of general administration to engage in
24 construction, building, renovation, remodeling, alteration,
25 improvement, or repair activities.

26 **Sec. 18.** RCW 53.12.270 and 1975 1st ex.s. c 12 s 1 are each
27 amended to read as follows:

28 (1) The commission may delegate to the managing official of a port
29 district such administrative powers and duties of the commission as it
30 may deem proper for the efficient and proper management of port
31 district operations. Any such delegation shall be authorized by
32 appropriate resolution of the commission, which resolution must also
33 establish guidelines and procedures for the managing official to
34 follow.

35 (2) The commission shall establish, by resolution, policies to
36 comply with RCW 39.04.280 that set forth the conditions by which

1 competitive bidding requirements for public works contracts may be
2 waived.

3 NEW SECTION. Sec. 19. Sections 5 through 15 of this act
4 constitute a new chapter in Title 53 RCW.

5 NEW SECTION. Sec. 20. If specific funding for the purposes of
6 this act, referencing this act by bill or chapter number, is not
7 provided by June 30, 2008, in the omnibus appropriations act, this act
8 is null and void."

2SHB 3274 - S AMD
By Senator

ADOPTED AND ENGROSSED 03/06/08

9 On page 1, line 2 of the title, after "districts;" strike the
10 remainder of the title and insert "amending RCW 53.08.120, 39.30.020,
11 39.04.010, and 53.12.270; reenacting and amending RCW 39.04.155; adding
12 new sections to chapter 53.08 RCW; adding a new chapter to Title 53
13 RCW; creating a new section; prescribing penalties; and providing an
14 expiration date."

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